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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,317	11/17/2003	Michael T. Stanhope	45634/319329 (1401)	5107
23370 7590 01/08/2008 JOHN S. PRATT, ESQ. KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309				
EXAMINER				
RUDDOCK, ULA CORINNA				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
01/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/715,317

Applicant(s)

STANHOPE ET AL.

Examiner

Ula C. Ruddock

Art Unit

1794

Period for Reply
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24, 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 30, 2007, has been entered.
2. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed October 30, 2007. The previously set forth rejections have been maintained.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

4. Claims 1-24 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 6,624,096). The Thomas reference teaches a flame resistant textile comprising a body of spun yarns of the type listed in claims 2 and 14 (col. 2, lines 22-33), and filament yarns woven in discrete positions. The filament yarns are aramid filaments, thus reading on claim 1 wherein a polyamide filament is recited. Thus, the limitations of claims 1-3, and 15 are met. The filament yarns are single yarns made of multiple filaments; therefore the limitations of both claims 4 and 5 (and 16-17) are met. Regarding claims 8 and 20, the filament yarns have a denier of 200 to 1500 denier (col. 2, lines 59-60). The Thomas reference specifically discloses that the weight ratio of the spun yarns to multi-filament yarns should range from 85:15 to 92:8 (col 2, In 15-17) and

further discloses that the spun yarns have a much greater presence in the fabric than the multifilament yarns (multifilament yarn is inserted among the spun yarns at an insertion ratio of 1:5 to 1:20; col 2, ln 17-19). The multifilament yarns are being equated to Applicant's "relatively tough yarns". Thomas et al. disclose the claimed invention except for the specific teaching that the yarns do not protrude beyond an outer surface of the fabric body.

It would have been obvious to one having ordinary skill in the art to have the yarns of Thomas not protrude beyond an outer surface of the fabric body, motivated by the desire to create a firefighters' garment that would not easily be caught fire *and that has lower chances of snagging during use*.

Regarding claims 6, 7, 18, and 19, the Thomas reference discloses aramid fibers, and is silent with respect to the materials of claims 6, 7, 18 and 19. Despite the lack of explicit teaching of the claimed materials, PBO, HDPE, aramid, and the like, are known functional equivalents in the art, having similar strength, toughness, and resilience characteristics. It has been held to be within the general level of skill of one in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, it would have been obvious to select any of the above materials as desired to create a fabric with the desired strength, toughness, and resilience characteristics.

Rejection is maintained.

Response to Arguments

5. Applicant's arguments filed October 30, 2007, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the yarns of Thomas do protrude

beyond an outer surface of the fabric body. It is the Examiner's position that although Thomas does not explicitly teach whether the yarns protrude or do not protrude beyond an outer surface of the fabric body, it would have been obvious to one having ordinary skill in the firefighter garment industry to ensure that the yarns do not protrude beyond the fabric body, motivated by the desire to create a garment that does not snag or fray during use.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/U. C. R./

/Ula C Ruddock/
Primary Examiner, Art Unit 1794